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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

Nos. 104 and 105

OAK WORSTED MILLS, *Petitioner*, *vs.* THE UNITED STATES	No. 104. On Writ of Certiorari to the Court of Claims.
TAFT WOOLEN COMPANY, *Petitioner*, *vs.* THE UNITED STATES	No. 105. On Writ of Certiorari to the Court of Claims.

PETITION OF OAK WORSTED MILLS AND TAFT WOOLEN COMPANY FOR A REHEARING

THEODORE B. BENSON,
WILLIAM MEYERHOFF,
Washington, D. C.
Counsel for Oak Worsted Mills and Taft Woolen Co.

BYRON S. ADAMS PRINTING CO., INC., WASHINGTON, D. C.

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Come now the above-named Oak Worsted Mills and Taft Woolen Company, and present this, their Petition for a Rehearing of the above-entitled causes and, in support thereof, respectfully show:

1. The opinion and judgment of the Court, rendered January 26, 1931, in R. E. Graham and E. E. Foster, Co-partners, doing business under the firm name of Millie Francis Oil Company, Petitioners, et al., Nos. 36, 104, 105, 323, 337, 463, 529, 565, 519, conflicts with the records and findings in the cases of these petitioners.

2. The opinion indicates that the Court, in applying the effect and validity of Section 611 to the cases of these petitioners, did not consider certain facts and find-

ings peculiar to them. This should distinguish them from the other cases. These distinguishing facts and findings are substantially as follows:

(a) The petitioners, after they had paid all their Income and Profits Taxes, made application and claim to the Commissioner of Internal Revenue for special assessment under the relief provisions of Sections 327 and 328 of the Revenue Act of 1918. Special assessment was granted, an overassessment determined and refund made.

(b) The claim in abatement, filed by petitioners, was a claim in bar of the re-assessment and re-collection of a sum assessed as an additional tax that had once been lawfully assessed, paid and satisfied in full, and the subsequent overassessment lawfully determined and refunded. There is no finding that the claim in abatement stayed the collection of a tax. (See concurring opinion, Judges Littleton and Graham, *Oak Worsted Mills* vs. *United States*, 38 F. (2) at page 704).

(c) There is no finding that the Commissioner of Internal Revenue had made an error or mistake of law or of fact in determining the overassessment and in making the refund.

(d) The total sum paid by petitioners as taxes was in excess of their proper tax liability, computed without regard to the statute of limitations.

For the foregoing reasons, it is respectfully urged that this petition for a rehearing be granted, and that the judgments of the Court of Claims be, upon further consideration, reversed.

Respectfully submitted,

THEODORE B. BENSON,
WILLIAM MEYERHOFF,
Washington, D. C.
Counsel for Oak Worsted Mills and Taft Woolen Co.

CERTIFICATE OF COUNSEL

We, Theodore B. Benson and William Meyerhoff, counsel for the above-named Oak Worsted Mills and Taft Woolen Company, do hereby certify that the foregoing petition for a rehearing in these causes is presented in good faith and not for delay.

THEODORE B. BENSON,
WILLIAM MEYERHOFF,
Counsel for Oak Worsted Mills and Taft Woolen Co.